

NO CHILD LEFT BEHIND -- UNSAFE SCHOOL CHOICE OPTION

Title IX, Part E, Subpart 2, Section 9532

PERSISTENTLY DANGEROUS SCHOOLS

I. Introduction

The Unsafe School Choice Option is mandated by section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. This amendment requires each state receiving funds under the ESEA to establish and implement a statewide policy requiring that a student who attends a “persistently dangerous school” be allowed to attend a safe public school. This same policy would include those students who had been a “victim” of a violent criminal offense.

II. Definition of a “Persistently Dangerous School”

A Kentucky public school will be considered persistently dangerous if conditions exist over a period of time that expose students to injury due to violent criminal acts. For the 2003-04 school year the Kentucky Department of Education will review the School Safety Data Report in an effort to determine if conditions exist over a two-year period that would designate a school as being “persistently dangerous”. For this purpose, school safety data for the 2000-01 and 2001-02 school years will be reviewed (data collected after the 2000-01 school year are felt to be of sufficient quality on which to base this decision). Beginning with the 2004-05 school year, the most recent three years of school safety data will be utilized to make this determination.

III. Criteria for Identifying Persistently Dangerous Schools

1. Violent Criminal Offenses for Determining Persistently Dangerous Schools

For the purpose of identifying a persistently dangerous school the following categories of violent criminal offenses will be used.

Forcible Rape

Robbery

Assault in the first degree

Assault in the second degree

Criminal Homicide

Firearms Violations (Federal or State Gun-Free Schools legislation (KRS 158.150)(2))

2. Designation

A Kentucky public school will be deemed “persistently dangerous” if any two of the following conditions exist for two consecutive years (for 2003-04) and three consecutive years for 2004-05 and beyond.

Forcible Rape – One or more incidents per year

Robbery – (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents one percent or more of the total student enrollment.

Assault in the first degree (KRS 508.010(1)(a)(b)) -- (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents one percent or more of the total student enrollment.

Assault in the second degree (KRS 508.020(1)(a)(b)(c)) -- (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents one percent or more of the total student enrollment.

Criminal Homicide – One or more incidents per year

Firearms Violations (Federal or State Gun-Free Schools legislation) (KRS 158.150)(2) – (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents one percent or more of the total student enrollment.

Notwithstanding any other provision, a school will be defined for purposes of this definition as any A1 – A4 school, as per 703 Kentucky Administrative Regulation 5:040.

3. Reporting Requirements

The Kentucky Department of Education will utilize the annual Safe Schools Data Report submitted by schools/districts through the Software Technology Incorporated (STI) system as its objective data source. For the purposes of determining “persistently dangerous” schools, reporting will be inclusive of both student and non-student incidents as well as incidents that occur during extracurricular activities on its grounds. All school districts are required to maintain school and district level data for a minimum of the last three consecutive years.

By July 15, 2003 the KDE will notify the local Superintendent of any schools that have been identified as “persistently dangerous”.

4. Pro-Active Interventions for At-Risk schools (beginning with the 2003-04 school year)

It will be the intent of the Kentucky Department of Education to effectively interact with schools in a manner that would remove unwanted behaviors prior to the designation of persistently dangerous being made. To this end, a two-tiered pro-active process will be established to collaborate with schools and appropriate partners for the purpose of correcting any identified deficits. The first tier will utilize objective data to create a watch list of schools that are deemed to be at risk of becoming persistently dangerous. The Kentucky Safe Schools Data Report will be utilized to identify those schools that have met the criteria outlined in item III (1)(2) at the end of each reporting period. The watch list designation will initiate a series of actions designed to implement specific interventions that are intended to eliminate the locally identified issues. Schools will remain on the watch list until the qualifying conditions no longer exist or until such time as the school is designated as persistently dangerous. The second phase of intervention will be the continuation of intensive services once a designation of persistently dangerous is issued. Such a continuum of services can be located on page seven of this document.

Within thirty (30) school days from the date of receiving notification from KDE of a school or schools being at risk of becoming persistently dangerous or having been designated as persistently dangerous the district must submit a corrective action plan to KDE for approval. The corrective action plan should be inclusive of both district and school efforts to implement the intended prevention and intervention strategies.

After a district's corrective action plan is approved by KDE the district and school shall implement the plan. To the extent possible Kentucky Department of Education staff (if requested) will assist with the corrective action plan.

Any school being identified as being at risk of being persistently dangerous or as being persistently dangerous will be required to evaluate and if necessary revise its corrective action plan on an annual basis. This evaluation and any revisions will need to be approved by KDE.

5. Provision of a Safe Public Choice Option to Students

Parental Notification

Districts must notify the parents of each student attending a "persistently dangerous school" of its designation. This notification must occur within ten (10) school days from the date the school district receives notification of such designation.

Transfer Procedures

To the extent possible, school districts should allow transferring students to transfer to a school that is making adequate yearly progress and has not been identified as being persistently dangerous, in school improvement, corrective action, or restructuring. The district is encouraged to take into account the needs and preferences of the affected students and parents.

- ?? Within twenty (20) school days from the date the school district receives notice of the “persistently dangerous” designation from the KDE, the district must notify students attending the school and their parents of the opportunity to transfer to a safe public school.
- ?? All transfers must be completed within thirty (30) school days from the date the school district receives notice of the schools “persistently dangerous” designation from the KDE.
- ?? In the event the school district does not have another safe public school appropriate for a transferring student, the district is strongly encouraged, but not required, to explore other appropriate options, such as an agreement with a neighboring school district to accept transfer students.

6. Removal of “Persistently Dangerous” Designation”

Upon the full implementation of the approved corrective action plan, the school district may apply to the KDE to have the designated school(s) removed from the list of “persistently dangerous” schools. Once such a request has been received, the KDE will annually reassess the affected school(s), using the criterion established for designation of becoming persistently dangerous. If the affected school does not meet any of these criteria in the preceding year, the designation will be removed.

KENTUCKY DEFINITION OF VICTIM OF A VIOLENT CRIME

Safe Public School Choice to Students Who Have Been Victims of a Violent Crime

Pursuant to the No Child Left Behind Act of 2001 (Public Law 107-110) Section 9532(a), when a student becomes the victim of a violent criminal offense (as determined by State law) while in or on the grounds of the public elementary or secondary school he or she attends, they are allowed to attend a safe public elementary school or secondary school within the local education agency ("LEA"). In the event that such a "violent criminal offense" occurs, it is the responsibility of the LEA to inform the victim's parent(s) or guardian(s) of this transfer provision. The following policy and procedural actions should be taken by the LEA to adequately ensure that a safe public choice option is made available to students that are determined to be victims of a "violent criminal offense".

1. The superintendent is to determine if a student has been the victim of a violent criminal offense. In making this determination, the superintendent may also wish to consult with the local law enforcement officials who may be investigating the incident, as well as the school district's attorney.
2. For the purpose of determining who is a "Victim", a "Violent Criminal Offense" is defined as:
 - ??Assault in the first degree (KRS 508.010 (1)(a)(b))
 - ??Assault in the second degree (KRS 508.020 (1) (a)(b)(c))
 - ??A sex offense that involves forcible compulsion (KRS 510.040 & KRS 510.070)
 - ??Kidnapping (KRS 509.040)
 - ??Robbery (KRS 515.020 and KRS 515.030) or
 - ??Any other offense defined in the Kentucky Penal Code that involves the use of a deadly weapon (KRS 500.080)
1. A criminal conviction is not a requirement for the superintendent's decision as to whether or not a person has been the victim of a violent criminal offense.
2. Pursuant to the NCLB, the safe public school choice option will not be available in school districts where there are not other safe public schools within the district at the same grade level.
3. In those school districts where the safe public choice option will be available, each Board of Education should adopt a policy establishing procedures that provide for the transfer of the student determined to be the victim of a violent crime. The school(s) under consideration for completing the transfer must contain the same grade level of the student that is determined to be the victim.

4. In those school districts where the safe public choice option will be available, each Board of Education shall adopt a policy establishing procedures for the notification of the victim's parent(s) or guardian(s) of their right to transfer the child to a safe public school within the district. Such procedures should allow for this notification to take place within twenty-four hours of a final determination on whether or not the student was a victim of a violent criminal offense
5. When student transfer within a district is not an option, schools and districts are strongly urged to collaborate with other entities, especially neighboring schools and districts, relative to the transfer of a student designated as a 'victim of a violent crime.'
6. In conjunction with the Unsafe School Choice Option Draft Non-Regulatory Guidance issued by the United States Department of Education, school districts are to offer the parent(s) or guardian(s) of the student determined to be a victim of a violent criminal offense the opportunity to transfer within ten calendar days of such a determination
7. In keeping with this guidance and to the extent possible, students who are determined to be the victims of a violent criminal offense should be transferred to schools that are making adequate yearly progress and have not been identified as requiring school improvement, corrective action or restructuring
8. School officials should keep detailed records of procedures utilized in determining who is a victim and completion of the transfer process, in case questions should arise later.
9. School officials should familiarize themselves with, and adhere to, all confidentiality laws and protocols relevant to such events